

# **TEXAS PENAL CODE**

## **(excerpt)**

### **§47.01.**

#### **(4) "Gambling device"**

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with non cash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

# **EMPLOYEE GUIDELINES (do not display)**

## **COMPLIANCE WITH TEXAS PENAL CODE §47.01. (4) (B)**

Although the machines are checked by the company to be “State Compliant”, feel free to ask any questions that you may have on their operation. Check each machine to insure that

- there is a Game Counter.
- The minimum play is \$0.10 or higher.
- It does not pay out more than one ticket per game played.

In redeeming tickets, the following guidelines will be followed:

- Each ticket is worth 100 points.
- All merchandise will be marked with the point value assigned by management.
- Tickets are exchanged for merchandise only. There will be NO CASH paid for tickets.
- The only acceptable tickets are those received at this facility. No other tickets will be honored.
- Merchandise redeemed must be “ON-SITE”.
- All Sales Are Final. There will be no refunds or exchanges. Ask management for any exceptions.

When purchasing merchandise for prizes, merchandise CAN NOT exceed a wholesale value of \$5.00. Invoices must be available to show proof of purchase and value.

If you have any questions, please feel free to ask.

*The Management*

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To the Citizens of Galveston County:

In response to the many calls I have received about the recent opinion issued by Supreme Court on 8-Liners I offer this general reply. Operators of the game rooms that have these devices are subject to prosecution for (1) Gambling Promotion, (2) Keeping a Gambling Place, and (3) Possession of Gambling Device, Equipment, or Paraphernalia. These are all Class A misdemeanor offenses that are punishable by up to a year in the county jail and or a possible fine up to \$4,000.00. The devices and all associated monies, from the devices, the business, and financial accounts, are all subject to seizure and forfeiture provided the evidence supports the charge.

The enforcement and investigation of possible violations of these laws falls within the jurisdiction of your local law enforcement agency and this office will prosecute cases against those establishments of which the agencies have sufficient evidence to charge a criminal offense. For a detailed listing of the criminal violations you can refer to the Texas Penal Code, Chapter 47.

The argument in the recent Supreme Court case was that the 8-Liners in question were not gambling devices because they fell into the exception of being a device that rewarded players with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items (tickets). The machines in that case awarded tickets that could be exchanged either for gift certificates or cash to play other machines and one issue decided was whether or not a gift certificate was a noncash merchandise prize. **The Supreme Court ruled that the gift certificates were the same as cash.**

The so called fuzzy animal exception applies when, from a single play, a noncash award is given that does not have a wholesale value of more than \$5.00 or 10 times the amount charged to play the device, whichever is less. Some operators of the game rooms attempt to circumvent this provision by various means of totaling the number of tickets, tokens, certificates, or whatever is awarded from the device.

The awarding of tickets that can be exchanged for a noncash merchandise prize is limited under the law by the mandate that **the wholesale value of the prize, not the tickets, available from a single play, must be no more than 10 times the amount charged to play or \$5.00, whichever is less.** In this matter the law suggests that the value determination of the prize, not the tickets, is based on what can be awarded from a single play and therefore does not allow for "stacking" of the tickets.

In an effort to be very specific about what actions this office believes to be in violation of the law, I have listed below those practices that could result in prosecution by this office.

1. Any award of cash, gift certificates, or anything, which may be exchanged for cash or gift certificates, including, certificates or tokens used for replay on a gambling device, regardless of value.

2. Any transfer of credits earned on one machine to another machine or the replay of credits earned on a machine in that or any other machine at a later date.
3. Any award of noncash merchandise prizes, toys, or novelties that have a wholesale value available from a single play of the game or device of more than 10 times the amount charged to play the game or device once or \$5.00, whichever is less. The accumulation or stacking of credits/tickets toward the purchase of more valuable prizes will be considered to be a violation of the law if the accumulated credits exceed the maximum value for a prize which can be awarded from the machine as noted above. The wholesale value of the prize, not the ticket, available from a single play, must be no more than 10 times the amount charged to play or \$5.00, whichever is less.
4. Additionally, the practice of "match play," where the owner or operator of a game or device "matches" the consideration paid by a player to play a game may subject the owner or operator to criminal prosecution if (1) the owner or operator puts cash into the machine, thereby rewarding the player with cash for play on the machine (see number 1, above); or (2) the owner's match has the effect of reducing the cost to play the game.
5. The use of "door prizes" to attract customers is presumed to be legal, *provided the players are not given additional entries into the door prize drawing based on the number of credits they win on a game or device.*
6. Regarding the "charitable sweepstakes" issue: Typically this is done by some type of an association being made with the charity group by the owner of the 8-liners. The players put their money into the machine as a "donation" and you are allowed to play the game for free. At the end of the day the Charity may pay the owner of the machines \$.90 out of every \$1.00 collected. *This is not an exception to the law.*

This office will continue to work with and assist local law enforcement agencies to monitor and investigate any businesses that operate any device in violation of the law. **If found to be in violation of the statutes, the response may include the execution of warrants on your business and the seizure of illegal devices and monies not only from the devices, but also from your business and where appropriate your financial accounts.** If three or more persons combine to carry on said offense(s), the punishment can be increased to a State Jail Felony, punishable by anywhere from 180 days up to two years imprisonment in a State Jail Facility and a possible fine not to exceed \$10,000.00.

As Criminal District Attorney, I urge those of you who may be involved in these activities in violation of statutes to voluntarily cease your operations immediately. If you are an owner or operator of one of these gaming rooms and you have further questions I suggest that you contact an attorney to assist you with your concerns.

Sincerely,

Kurt Sistrunk  
Criminal District Attorney  
Galveston County, Texas